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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,705	09/14/2000	Thomas J. Nelson	068368.0131	8997

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EXAMINER

MAI, LANNA

ART UNIT PAPER NUMBER

3637

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/661,705

Applicant(s)

NELSON, THOMAS J.

Examiner

Lanna Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2,9,11-14,16-18,21,26 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 9, 11-14, 16-18, 21, 26, 29-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 9, 12-14, 16-18, 21, 26, 29-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Howorth.

Howorth: Fig. 9 shows a flooring panel (24) having a top surface (31), a bottom surface (30) and a middle substrate (24). The middle substrate has identical grooves (33) formed thereon and identical-profiled edges extending between top/bottom surfaces. Outwardly tapering channel (35) formed within the bottom surface, associated and extending parallel with each edge. The channel has a top portion with outwardly tapering walls extending toward the bottom of the panel such that the channel becomes wider at the bottom of the panel than at the top portion of the panel. The channel includes a first wall (on the left of the channel) defines an obtuse angle, and a second wall (on the right of the channel) defines an obtuse angle, wherein the first and second walls extend in opposite directions. Howorth's panel is square but it can be in any configuration (lines 26-30, col. 4). The panel is made of high molecular weight polyethylene (lines 33-36, col. 2), which encompasses the group of materials recited in claims 9 and 21.

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Claims 2, 9, 12-14, 16-18, 21, 26, 29, 31, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Kajiwara

Kajiwara: Fig. 2 shows a flooring panel (10) having a top surface (upper surface of element 12 adjacent to element 62), a bottom surface (the lower surface of 12 adjacent element 60) and a middle substrate (12). The middle substrate has identical grooves (40) formed thereon and identical-profiled edges extending between top/bottom surfaces. Outwardly tapering channel (14, 16) formed within the bottom surface, associated and extending parallel with each edge. The channel has a top portion (50) with outwardly tapering walls extending toward the bottom of the panel such that the channel becomes wider at the bottom of the panel than at the top portion of the panel. The channel includes a first wall (on the left of the channel), and a second wall (52) defines an obtuse angle, wherein the first and second walls extend in opposite directions. Kajiwara's panel is square or rectangular in shape but it can be in any configuration (lines 32-36, col. 2). The panel is made of plywood (lines 41-44, col. 2), which encompasses the group of materials recited in claims 9 and 21.

### ***Claim Rejections - 35 USC § 103***

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howorth or Kajiwara. Neither Howorth nor Kajiwara specify the thickness of the panel. However, the range of thickness specified in claim 11 is commercially well known. One of ordinary skill in the art would have made the panel of Howorth or Kajiwara in the

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thickness of the range between 0.24-0.32 inches to keep the cost down yet optimize the performance of the panel.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 2, 9, 12-14, 16, 17, 26, 29-34 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20, 23, 24, 63-66 of copending Application No. 10/265,900. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are a subcombination of the claims in the copending application 10/265,900.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant's arguments with respect to claims 2, 9, 12-14, 16-18, 21, 26, 29-34 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Lanna Mai at telephone number 703-308-2486.

Lm

4-16-04

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